

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Ellis J. Saad)	
Map 118-10-0, Parcel 79.00)	Davidson County
Residential Property)	
Tax Year 2005)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$86,200	\$199,500	\$285,700	\$71,425

An appeal has been filed on behalf of the property owners with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on May 11, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were Ellis J. Saad, the taxpayer and Jason Poling for the Metro. Property Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an apartment complex located at 912 Woodmont in Nashville, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(b)(2) & 67-5-1412(e). Nevertheless, the legislature has also provided that:

The taxpayer shall have **a right to a hearing and determination to show reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412(e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to

waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added.*) *Associated Pipeline Contractors Inc.* (Williamson County, Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction to this appeal, the taxpayers must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

In this case, the taxpayer, Mr. Saad, did not appeal to the Davidson County Board of Equalization because he was hospitalized from having suffered a stroke. He also had complications due to his high blood pressure.

The administrative judge finds that reasonable cause does exist justifying the failure to first appeal to the Davidson County Board of Equalization and thus the State Board of Equalization does have jurisdiction to hear this appeal.

Now to the issue of value:

Tennessee Code Annotated § 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its **sound, intrinsic and immediate value**, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . . ."

The germane issue is the value of the property as of January 1, 2005. Since the taxpayer seeks to change the present valuation of the subject property, he has the burden of proof in this administrative proceedings. State Board Rule 0600-1-.11(1).

In support of his contention of value, Mr. Saad alleges the property is worth \$200,000. The contention of value is based on his attempts to sell the property and the best offer he received was \$200,000. There is a creek that runs the length of the left side of the house that often floods during rainy season.

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$277,080 based upon the principal of functional obsolescence.¹ The land value should be reduced an additional 10%.

See *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised. . ." Final Decision and Order at 3.

¹ An element of depreciation (diminished value) resulting from deficiencies in the structure. *The Dictionary of Real Estate Appraisal*, 4th Ed., 2002 Functional Obsolescence is caused by flaw in the structure, materials or design of the improvement. . . *The Appraisal of Real Estate*, 12th Ed., 2001.

ORDER

It is, therefore, ORDERED that the following values shall be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$77,580	\$199,500	\$277,080	\$69,270

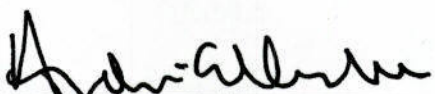
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of June, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Ellis J. Saad
Jo Ann North, Assessor of Property